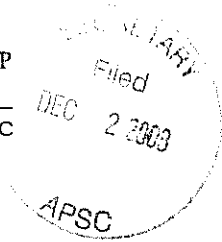




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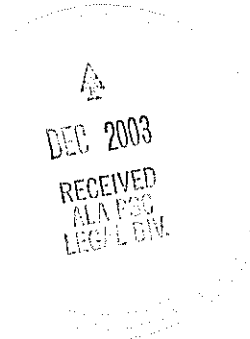


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December 2, 2003

BY HAND DELIVERY

Mr. Walter Thomas
Secretary
Alabama Public Service Commission
RSA Union Building
8th Floor
100 N. Union Street
Montgomery, Alabama 36104

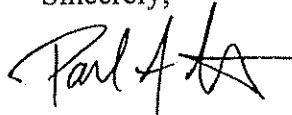


Re: Petition For A Declaratory Order Regarding Classification of IP Telephony
Service; Docket No. 29016

Dear Mr. Thomas:

Enclosed for filing are the original and ten copies of Reply Comments of Vonage Holdings Corp. in the above-referenced matter.

Sincerely,


Paul A. Clark

PAC:dpe
Enclosures

Before the
ALABAMA PUBLIC SERVICE COMMISSION

Petition for Declaratory Order)	
Regarding Classification of)	Docket No. 29016
IP Telephony Service)	

REPLY COMMENTS OF
VONAGE HOLDINGS CORP.

Vonage Holdings Corp. ("Vonage"), by its undersigned counsel, respectfully submits these reply comments in the above-referenced proceeding pursuant to the Commission's August 29, 2003, Order.¹ The Commission opened this proceeding in response to the ILECs' Petition for Declaratory Ruling ("Petition") regarding the classification of Internet Protocol ("IP") telephony. A total of eleven parties filed comments in this proceeding. Although numerous viewpoints were expressed concerning a number of matters, ten commenters agreed on one point: the Commission should not grant the Petition as filed. In fact, the only comments filed in support of the Petition were filed by the Petitioners. For the reasons detailed herein, Vonage urges the Commission to either deny the ILEC Petition or to defer consideration until the Federal Communications Commission ("FCC") completes its recently announced inquiry into Voice over Internet Protocol ("VoIP") services.

¹ *Petition for a Declaratory Order regarding classification of IP Telephony Service*, Order Establishing Declaratory Proceeding, Docket No. 29016 (rel. Aug. 29, 2003).

I. THE COMMISSION LACKS JURISDICTION TO SUBJECT VONAGE'S SERVICE TO COMMON CARRIER REGULATION

In its initial Comments, Vonage explained in detail why its service is not subject to the Commission's jurisdiction.² While there are a number of reasons upon which to base this conclusion, a number of commenters focused on the recent ruling by the United States District Court for the District of Minnesota.³ These parties emphasized that the District Court's finding that Vonage's Digital VoiceSM service is an information service as defined by the 1996 Telecommunications Act means that Federal law preempts state regulation of Vonage's service.⁴ As such, the Commission should reject the Petition because it invites the Commission to impose state regulations in manner that would conflict with Federal law.

Aside from the fact that Vonage's service is properly classified as an information service, Vonage Digital VoiceSM is also an interstate offering. Due to the impossibility of separating the Internet, or any service offered over it, into intrastate and interstate components, State regulatory jurisdiction treating VoIP services as common carriers, or the equivalent, is preempted by Federal law. The Attorney General for the State of Alabama notes that VoIP services "tend to be largely interstate in nature."⁵ Other parties concur that VoIP services are properly classified as interstate service offerings.⁶ Accordingly, state regulation of VoIP services would be preempted

² See generally Vonage Holding Corp. Comments.

³ *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm'n*, Civil No. 03-5287(MJD/JGL), slip op. at 12 (D. Minn. Oct. 16, 2003) (hereinafter, "*Vonage v. Minn PUC*").

⁴ See, e.g., AT&T Comments, at 12; Alabama Cable Telecommunications Assoc. Comments at 9 ("ACTA"); Joint Comments of ICG Telecom Group, Inc. and Level 3 Communications, LLC at 4 ("Joint Comments"); ITC^DeltaCom Communications Inc. Comments, at 1-2; Net2Phone Comments at 9; Vonage Holding Corp. Comments, at 8 ("Vonage").

⁵ See Attorney General of the State of Alabama Comments, at 2.

⁶ See ACTA Comments, at 7; Joint Comments, at 20; Net2Phone Comments at 6; Voice on Net Coalition Comments, at 14; Vonage Comments, at 8-10.

by Federal law regardless of how State law would classify Vonage's service or whether (or how) it would be regulated under Federal law.

II. REGULATING VoIP SERVICES WOULD BE CONTRARY TO THE PUBLIC INTEREST

Since initial comments were filed in this proceeding, recent events lend additional support for the Commission to either deny or, at the very least, defer consideration of the issues raised by the ILEC Petition. As the Commission knows, the FCC held a hearing concerning VoIP on December 1, 2003.⁷ Shortly after the hearing, the FCC will initiate a Notice of Proposed Rulemaking ("NPRM") to investigate the migration of voice services to Internet-protocol-based networks and solicit comment on the appropriate regulatory treatment for such services.⁸ One of the issues the FCC is certain to consider is whether the *Vonage v. Minn. PUC* decision is good national policy or should be changed. In light of these developments, anything the Commission determines concerning VoIP services in this proceeding will be temporary in nature and likely superceded by the order resulting from the FCC's VoIP NPRM. Accordingly, Vonage recommends that the Commission apply the District Court's reasoning to dismiss the ILEC Petition or, in the alternative, defer further consideration until the FCC concludes its VoIP NPRM. Instead of allowing the Petitioners to define this Commission's prerogative to determine the extent and scope of its jurisdiction over nascent VoIP services like Vonage's, the Commission should work cooperatively with the FCC to determine whether and how to apply regulations to VoIP services.

⁷ See *FCC to Begin Internet Telephony Proceedings*, Public Notice (rel. Nov. 6, 2003); Letter from Michel K. Powell, Commission Chairman, Federal Communications Comm'n, to The Honorable Ron Wyden, Senator, United States Senate (Nov. 5, 2003) ("*Wyden Letter*") (attached hereto as Exhibit 1).

⁸ See *Wyden Letter*, at 2.

The Commission must also consider the negative impact that premature regulation of VoIP services would have on both broadband deployment and on the widespread adoption of new technologies by users. VoIP is shaping up to be the “killer app” that drives broadband deployment. The features, functionality and services promised by this technology could easily be extinguished by the construction of artificial barriers to competition. Commission Chairman Michael K. Powell recently recognized the importance that VoIP has in the telecommunications marketplace:

Although still in the early stages of commercial development and deployment, the proliferation of broadband Internet connections is turning yesterday’s VoIP dreams into today’s realities. Entrepreneurs are tapping into the Internet’s potential to provide low-cost voice services to Americans throughout the country In addition, investment in broadband Internet access and VoIP services are creating small business jobs. U.S. businesses, small and large alike, are increasingly using these Internet services to increase productivity and contribute to our Nation’s economic growth. In short, the creative forces that have fueled the Internet’s growth for the last decade are doing the very thing government regulators have tried to accomplish since the 1996 Telecommunications Act – bring competitive, cheaper and more innovative voice services to the public.⁹

Subjecting innovative and highly competitive VoIP services to legacy regulations designed to restrain the market power of monopolists could stifle the continuing innovation of such services as well as impede the market acceptance of broadband services. The Commission must not allow old constructs of questionable relevance inhibit the growth of VoIP services.

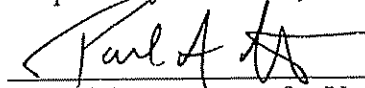
⁹ See *FCC to Begin Internet Telephony Proceedings*, Public Notice (rel. Nov. 6, 2003); Wyden Letter.

III. CONCLUSION

For the foregoing reasons, Vonage respectfully urges the Commission to deny the ILEC Petition for Declaratory Ruling regarding the classification of VoIP services. Not only does the Commission lack jurisdiction to subject Vonage's Digital VoiceSM service to common carrier regulation because that service constitutes an information service under Federal law, but the Commission also lacks jurisdiction because Vonage's service constitutes an interstate service. Federal law preempts state regulation of both information and interstate services.

Furthermore, the FCC is about to initiate a rulemaking to investigate the provision of voice services over Internet protocol and to determine the proper regulatory treatment of such services. Any Commission determination regarding these services would be likely preempted and superceded by an FCC order resulting from that rulemaking. Consequently, Vonage respectfully recommends that, should the Commission decide it wishes to exercise jurisdiction over VoIP services, it at least defer consideration of the issue until completion of the FCC's VoIP rulemaking as an alternative to dismissing the Petition.

Respectfully submitted,



One of the Attorneys for Vonage Holdings Corp.

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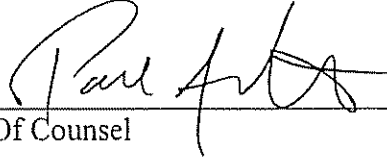
Washington, D.C. 20007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by U.S.

Mail, properly addressed and postage prepaid, on this the 2nd day of December, 2003:

Francis B. Semmes, Esq.
BellSouth
3196 Highway 280 South
Room 304N
Birmingham, Alabama 35243



Of Counsel